United Nations

A/59/203/Add.1

General Assembly

Distr.: General
14 October 2004

Original: English

Fifty-ninth session
Agenda items 87 (c) and 96
Globalization and interdependence: preventing and combating corrupt practices and transfer of funds of illicit origin and returning such assets to the countries of origin

Crime prevention and criminal justice

Preventing and combating corrupt practices and transfer of funds of illicit origin and returning such assets to the countries of origin

Report of the Secretary-General*

Addendum

II. National measures

Canada

1. The anti-corruption provisions in the Canadian Criminal Code include criminal offences of bribery; frauds on the Government; fraud or a breach of trust in connection with the duties of office; municipal corruption; selling or purchasing office; influencing or negotiating appointments or dealing in offices; wilfully attempting to obstruct, pervert or defeat the course of justice through bribery or other corrupt means; and fraud and secret commission. The Corruption of Foreign Public Officials Act of 1999 also criminalizes bribing a foreign public official.

2. Recent progress includes amendments to the Canadian Election Act and the Income Tax Act concerning political financing of federal election (January 2004); amendments to the Criminal Code in relation to corporate criminal liability (March 2004); other Criminal Code amendments that create an offence of threatening or retaliating against employees for disclosing unlawful conduct

* The present addendum was submitted after the deadline as a result of late submission of replies by Member States.

V.04-58339 (E) 151004 181004

(March 2004); and the new Public Service Employment Act, which modernizes the public service while retaining core values (not yet in force).

3. Both the possession and the laundering of property or proceeds of crime are criminal offences in accordance with the Criminal Code. The Criminal Code also provides for the conviction-based confiscation of proceeds of crime from most indictable federal crimes, including corruption offences.

4. With respect to the return of property, Canadian legislation will allow the return of property by way of restitution to victims who have an interest in the property, if their interest is demonstrated and if a conviction has been obtained in Canada. In addition, any seized or restrained property may, by separate application under the Criminal Code, be returned to its legitimate owner at any time. The Seized Property Management Act allows Canada to share confiscated assets with foreign jurisdictions that have a reciprocal asset-sharing agreement with Canada. The manner in which proceeds are shared is set out in the Forfeited Property Sharing Regulations.

5. The new Proceeds of Crime (Money-Laundering) and Terrorist Financing Act of 2000 introduced tools to improve the detection, prevention and deterrence of money-laundering in Canada, as well as established the Financial Transactions and Report Analysis Centre of Canada, which receives, analyses and discloses information in order to assist law enforcement authorities in combating money-laundering. Canadian courts can grant orders against banks and financial institutions for the search and seizure of bank records, if the relevant standard is met.

6. The Mutual Legal Assistance in Criminal Matters Act of 1988 allows Canada to enforce a foreign order to seize or restrain proceeds, if a person is charged in the requesting State and the condition of dual criminality is met. The Act also allows Canada to enforce a foreign forfeiture order providing that a person is convicted of such an offence without possibility of further appeal. On the other hand, assistance to obtain, with respect to evidence, production and seizure order and testimony for foreign States can be provided without any dual criminality precondition. The enforcement of foreign orders or requests based on a civil process is not allowed in Canada. Canada also has extradition legislation and a network of extradition treaties.

7. A number of mechanisms to ensure integrity in the law enforcement agencies has also been informed, including the Office of the Ethics Advisor within the Royal Canadian Mounted Police (RCMP), the Commission for Public Complaints Against the RCMP, the RCMP External Review Committee, as well as the Security and Intelligence Review Committee.

8. The RCMP, in partnership with the White Collar Crime Centre of Canada, launched Reporting Economic Crime Online (RECOL) in October 2003, which allows any citizen, within or outside Canada, to report almost any type of economic crime, including corruption and related offences, which present a Canadian content. The RCMP is spearheading an initiative through the Law Enforcement Sub-Working Group of the Group of Eight to encourage the implementation of a system such as RECOL to facilitate the exchange of transnational economic crime complaints, including corruption.

9. Canada is active in the fight against corruption and money-laundering in many international forums and anti-corruption treaties ratified by Canada include the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions[1] and the Inter-American Convention against Corruption.[2] Canada is also a party to the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex I) and a signatory of the United Nations Convention against Corruption (resolution 58/4). The Government of Canada has informed the Secretary-General that the Canadian anti-corruption provisions satisfy and implement its obligations set out in the various treaties. In the context of corruption and good governance, Canada has also raised the issue of corporate social responsibility at the Organization of American States and the Organization for Security and Cooperation in Europe.

Cuba

10. The Cuban Penal Code covers acts of corruption and related offences that are deemed to be criminalized by the United Nations Convention against Corruption, including bribery (art. 152), embezzlement (art. 336), corruption of public officials (arts. 136 and 139), misappropriation (art. 335), wrongful use of assets (art. 224), trading in influence (art. 151), abuse of authority (art. 133), abusive acts committed in the exercise of functions (art. 225), illicit enrichment (art. 150), concealment (art. 160), assault (art. 142), perjury (art. 155), simulation of a crime or offence (art. 158), tax evasion (arts. 343 and 345) and money-laundering (art. 348).

11. Various institutional arrangements have been made in order to allow the Government of Cuba to fight all forms of corruption in a comprehensive manner. They include a reporting system in government at all levels; the constitutional rights of access to information; and the incompatibility of solicitation of public officials and financing political parties and candidatures with the Cuban political system. Among others, the Code of Ethics for Senior State Officials and the codes of ethics for other professions ensure transparency in government and provide a solid basis for the implementation of the United Nations Convention against Corruption.

12. Emphasizing the importance of effective prevention in the fight against corruption, many efforts have been made to identify areas vulnerable to corruption and to eliminate or limit to the greatest extent possible the causes and conditions favouring corrupt behaviour. With a view to standardizing internal controls in various governmental bodies and ensuring transparency, the Ministry of Finance and Prices has introduced the Definitions of Internal Control.

13. Decree-Law 159 of 8 June 1995, Decree-Law 219 of 25 April 2001 and Decisions 4045 and 4374 of the Executive Committee of the Council of Ministers constitute the foundations of the Cuban legal framework for the fight against corruption. Decree-Law 219 established the Ministry of Audit and Control with responsibility for directing, executing and monitoring the implementation of anti-corruption policy within the administration. The Ministry also receives complaints and reports from citizens concerning illegal acts in the use of public resources and in the conduct of public functions. With a view to exchanging experience on preventive measures, workshops and meetings are held periodically at all levels. The Governmental Control Commission, comprising the heads of top-level governmental bodies, has played a significant role in analysing and implementing

auditing and inspections. The role of the People's Court and the Public Prosecutor's Office in ensuring compliance with the laws is also underscored.

14. With a view to combating money-laundering, the *Guide for the Members of the National Banking System for the Detection and Prevention of Movements of Illicit Capital* (resolution 91/97 of the President of the Central Bank) provides instructions as to how to identify suspicious transactions. An additional instruction (1/98 of the President of the Central Bank) has been issued to indicate detailed descriptions of suspicious behaviour, so as to facilitate the detection of money-laundering. The national banking system is also required to comply with the Rules for members of the National Banking System concerning the Detection and Prevention of Illicit Activities in Collections and Payments (Instruction 2/00). Pursuant to resolution 17/04, the Banking Supervisory Office was established within the Central Bank.

15. The Government of Cuba also highlights a significant role that education plays in combating corruption by promoting broad participation of society in the war against corruption.

El Salvador

16. In 1999, the Government of El Salvador enacted the Money-Laundering Act, which contains provisions to punish the concealing or disguising of the illicit origin of assets, including acts of corruption. In order to assist in detecting and controlling the placement of assets allegedly derived from criminal activities, the Government also established a national regulatory framework consisting of a number of international instruments, including the United Nations Convention against Transnational Organized Crime; the Central American Convention for the Prevention and Suppression of the Offences of Money-Laundering and Laundering of Assets Connected to Illicit Drug Trafficking and Related Offences;[3] the Forty Recommendations of the Financial Action Task Force on Money Laundering and recommendations of the Financial Action Task Force of South America against Money Laundering; and the standards issued by the Basel Committee on Banking Supervision.

17. Furthermore, steps have been taken at the request of El Salvador to freeze funds in Panama on the suspicion that those funds are derived from acts of corruption in El Salvador. According to the Government, the frozen funds have amounted to approximately $2.1 million to date and the relevant criminal proceedings are currently at the investigation stage.

Guatemala

18. The Government of Guatemala has enacted several laws to prevent and combat corrupt practices and transfer of illicitly acquired assets, in particular, the Law against the Laundering of Money or Other Assets (Decree 67-2001 of 17 December 2001), which aims at preventing, controlling, detecting and punishing the laundering of money or other assets derived from the commission of any offences and establishes the Special Inspectorate to monitor compliance with the Law by the Banking Commission; the Law on the Office of the Comptroller-General of Accounts (Decree 31-2002 of 14 May 2002), which gives the Office responsibility for controlling revenue, expenditure and all budgetary matters of state bodies; and

the Law on the Integrity and Responsibilities of Civil Servants and Public Employees (Decree 89-2002 of 6 December 2002), which establishes standards and procedures to increase transparency in public administration, ensures strict compliance with the constitutional and legal provisions and prevents any diversion of public resources, property, funds and securities.

19. Under article 18 of the Law against the Laundering of Money or Other Assets and article 5 of the Regulations to Implement the Law, a wide range of financial institutions are required to adopt and implement internal measures to avoid the improper use of their services and products for the laundering of money and other assets, including the know-your-customer measures.

20. Subject to the existence of relevant agreement with such countries, the Special Inspectorate may exchange information with other countries in order to analyse money-laundering cases (art. 33, subpara. (d), of the Law against the Laundering of Money or Other Assets). To date, 17 agreements have been concluded.

21. Legal assistance may be provided by the competent Guatemalan authority to other competent authorities for the following purposes: taking evidence or statements from persons; effecting service of judicial documents; executing searches and seizures; examining objects and sites; providing information and evidentiary items; providing originals or certified copies of relevant documents and records, including bank, financial or commercial records; identifying or tracing proceeds, instrumentalities or other items for evidentiary purposes; and any other form of mutual legal assistance authorized by domestic law.

22. The Government of Guatemala signed the United Nations Convention against Corruption at the High-level Political Conference for the Purpose of Signing the United Nations Convention against Corruption, held in Merida, Mexico, from 9 to 11 December 2003. On 24 March 2004, the Banking Commission put forward its technical observations regarding ratification of the Convention to the Minister for Foreign Affairs.

Honduras

23. With regard to corruption offences, including illicit enrichment and transnational bribery, Honduras is currently in the process of approving a new Criminal Code, which covers all the offences provided for in both the United Nations Convention against Corruption and the Inter-American Convention against Corruption.

24. Honduras also approved Legislative Decree 45-2002 of 5 March 2002, containing the Law against the Offence of Money-Laundering, whose highlights are as follows:

(a) The offence of money-laundering is defined as an act designed to legalize income or assets that are derived directly or indirectly from various offences, such as illicit trafficking in drugs, persons, influence, weapons or human organs, financial fraud or embezzlement in the public or private sector, terrorism and associated offences, or whose origin has no legal economic basis or justification;

(b) At the request of a foreign State, the competent court may, in accordance with national law, order the seizure, freezing or confiscation of assets, proceeds or

instrumentalities within its jurisdiction that are connected with the offences set out in the Law. Other matters in this connection shall be dealt with in accordance with the relevant international conventions ratified by Honduras.

25. With regard to the return of assets, national law does not expressly provide for the return to requesting foreign States of assets derived from corruption offences, apart from what is mentioned in the Law against the Offence of Money-Laundering. Once the United Nations Convention enters into force in Honduras, however, the Government will have to adapt its national law to provide for the return of assets, as required by the Convention.

26. Honduras is a signatory of the United Nations Convention against Corruption and is waiting for approval by the National Congress to ratify it.

Morocco

27. Recognizing destructive effects of corruption on development, the Government of Morocco has made several efforts to combat all forms of corruption, including criminalizing acts of bribery and abuse of influence, with sanctions taking into account the gravity of offences. Under articles 248-256 of the Penal Code, bribery is an offence punishable by imprisonment of between two and five years and a fine of between 250 and 5,000 dirhams. Article 35 of the Royal Decree of 11 December 1965 also provides that an act of bribery by a public official, where such bribery involves more than 25,000 dirhams, is punishable with imprisonment of between 5 and 10 years and a fine of between 1,000 and 10,000 dirhams.

28. The Special Court of Justice, established and empowered specifically to punish public officials and judges by the Royal Decree of 11 December 1965, as amended by the Decree of 6 October 1972, will be abolished, as a bill for its abolition has been recently approved as a result of increasing criticism of the exceptional nature of the Court within the judicial system of Morocco.

29. Recent efforts in the fight against corruption include the approval of amendments to the Penal Code, which will increase the penalty for several offences, such as bribery, deception and abuse of influence. A new provision for the confiscation and sales of assets derived from offences, even in the possession of a third party has also been approved. Finally, under the Declaration of Property and Movable Valuables Act 25/92, public officials are required to declare property and movable valuables owned by either themselves or their children.

30. The Government of Morocco has signed the United Nations Convention against Corruption with a view to ensuring its strong commitment to complying with international legal instruments. Following its ratification, the Government will be obliged to bring its penal legislation into conformity with the requirements of the Convention as well as to implement the Convention.

Netherlands

31. Since its signature of the United Nations Convention against Corruption at the High-level Political Signing Conference in Mexico in December 2003, the Netherlands has been strongly committed to the ratification and full implementation of the Convention. With a view to fully implementing the Convention, in particular the provisions on asset recovery in chapter V, the Government is currently in the

process of adopting and modifying legislation and administrative measures, which will be duly reported upon after the completion of its ratification process.

32. The Netherlands also highlights a number of international anti-corruption instruments to which the Government is party, including the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the United Nations Convention against Transnational Organized Crime, the Council of Europe Criminal Law Convention on Corruption,[4] the Convention on the fight against corruption involving officials of the European Communities or officials of member States of the European Union,[5] the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests[6] and its Protocols, as well as the European Union Council Framework Decision on combating corruption in the private sector.[7]

33. Additionally, the Netherlands is a donor of the Global Programme against Corruption of the United Nations Office on Drugs and Crime, whose activities include the provision of technical assistance to Member States and dissemination of anti-corruption handbooks.

Pakistan

34. The Government of Pakistan, in addition to the information contained in the report of the Secretary-General of 30 July 2004 (A/59/203), indicated that its National Anti-Corruption Strategy drew on the *United Nations Anti-Corruption Toolkit* at the time of its formulation and implementation and provided detailed information indicating the employment of various tools contained in the *Toolkit*.

Philippines

35. Updated information specifically relating to its measures to prevent and combat corrupt practices among public officials, as compiled by its Presidential Anti-Graft Commission (PAGC), has been provided by the Government of the Philippines.

36. PAGC, which was established to investigate or hear administrative cases or complaints against public officials, has enhanced the prosecutorial aspect of the anti-corruption efforts by the Administration of President Gloria Macapagal Arroyo. From January 2001 to May 2004, PAGC resolved 1,015 cases, of which 64 cases recommended for punitive measures. In addition, PAGC had conducted the Lifestyle Check on government officials and received 159 Lifestyle Check Information/Tips/Reports as at 31 May 2004. For further facilitating the Lifestyle Check, PAGC has set up a wide network of informants, as well as maintained a hotline to receive Lifestyle Check reports and tips from the general public.

37. In addition, anti-corruption efforts by the Government have expanded beyond prosecution so as to include preventive measures by reforming the government systems. PAGC, in cooperation with the Presidential Committee on Effective Governance, the Office of the Ombudsman and the Transparency and Accountability Network, a civil society network of anti-corruption groups, has also played a leading role in formulating preventive measures by helping various governmental agencies formulate their own preventive programmes. The implementation and monitoring of this PAGC-led programme, called the Corruption-Prevention

Program: Government and Civil Society Partnership, are scheduled to be launched in October 2004.

38. PAGC has also played a leading role in preparing and formulating the Philippines' position during the negotiation of the United Nations Convention against Corruption.

Portugal

39. Portuguese law defines various forms of corruption, such as criminal offences of active and passive bribery of domestic public officials and of political parties; active and passive corruption in the private sector and in sport; active corruption against international business (Law 13/2001); trading in influence (art. 335 of the Criminal Code); and embezzlement (art. 375 of the Criminal Code). Recent progress includes Law 108/2001, amending both the Criminal Code and Law 34/87, which introduced some amendments to the legal regime against corruption and extended the scope of application so as to include certain foreign public officials; and the Law on the Organization and Functioning of Political Parties, which modifies the financing regime of political parties and election campaigns.

40. Article 368-A of the Criminal Code, as amended by Law 11/2004, criminalizes acts of money-laundering and lists a number of predicate offences, including corruption and trafficking in drugs and persons.

41. Pursuant to Law No. 36, as amended by Law 11/2004, certain financial institutions (both banking and non-banking institutions) and certain non-financial institutions that perform activities linked to games or to the trade of goods of high value or immovable property (e.g. casinos and real estate agents) are obliged to identify the person involved in transactions exceeding a certain amount, to retain the evidence for identification and to report suspicious transactions to the competent judicial authority.

42. If certain conditions are met, Portuguese legislation allows both seizure and confiscation of the bribe and its proceeds. Article 178 of the Criminal Code allows for the seizure of certain objects, while articles 109 to 111 provide for confiscation of instruments, proceeds and advantages of crime. In addition, the Portuguese law allows the tracing of items as long as the link to the proceeds is traceable.

43. In accordance with Law No. 144/99, as amended by Laws 104/2001 and No. 48/2003, the forms of cooperation that may be provided by Portugal in criminal matters include extradition; transfer of proceedings in criminal matters; enforcement of criminal judgements; transfer of sentenced persons; supervision of conditionally released persons; and mutual assistance in legal matters. Furthermore, providing mutual legal assistance involving coercive measures requires dual criminality.

44. The Government further indicated that a code of conduct for public officials has been adopted and conflict of interests is addressed in the Criminal Code.

45. Bilateral agreements on mutual legal assistance have been concluded by Portugal with a number of countries, including Angola, Brazil, Morocco, Mozambique, Spain and Tunisia. Portugal has also ratified the following multilateral agreements against corruption: the Convention against Bribery of Foreign Public Officials in International Business Transactions; the Council of Europe Criminal Law Convention on Corruption; and the Convention on the fight

against corruption involving officials of the European Communities or officials of member States of the European Union. With regard to the United Nations Convention against Corruption, Portugal highlights that the Convention has been already signed and the ratification process is in progress.

Sweden

46. Since the previous report of the Secretary-General of 16 August 2002 containing information on measures adopted by Sweden (A/57/158/Add.1), the Government of Sweden has ratified the Criminal Law Convention and the Civil Law Convention[8] on Corruption of the Council of Europe, as well as the additional Protocol to the Criminal Law Convention. The ratification of the Criminal Law Convention and its additional Protocol led to amendments to the Swedish Penal Code regarding both active and passive corruption.

47. Sweden has signed and is currently preparing the ratification of the United Nations Convention against Corruption.

Ukraine

48. Recognizing that much progress has been made in combating money-laundering in Ukraine, the Financial Action Task Force on Money Laundering removed the country from its list of non-cooperative countries and territories in February 2004.

49. New developments in the Ukrainian Financial Intelligence Unit (FIU) include the expansion of the range of financial intermediaries to gambling institutions and pawn shops; the establishment of the Unified State Information System, which allows 17 government agencies to provide FIU with relevant information on money-laundering; and the improvement of the FIU procedures for examining and analysing information. FIU has also held a number of training seminars for representatives of financial institutions, as well as for staff of state regulatory and law enforcement agencies.

50. Measures taken by state regulatory agencies in relation to financial intermediaries for violation of anti-money-laundering legislation were also reported. State regulatory agencies supervise a wide range of financial intermediaries, from banks and securities companies to insurance firms. An additional due diligence measure has been introduced with a view to preventing criminals and other persons with a dubious business reputation from moving into financial intermediaries. At the same time, law enforcement agencies have also been strengthened and coordinated with a view to countering money-laundering in a more effective manner.

51. With a view to ensuring fast and constructive information exchange among relevant authorities on money-laundering and predicate offences, the Government of Ukraine has undertaken extensive international, regional and bilateral cooperation activities with various entities, including the World Bank, the International Monetary Fund, the Council of Europe, the Egmont Group, the Financial Action Task Force on Money Laundering and its Eurasian Group, the Organization for Economic Cooperation and Development and foreign financial intelligence units. Several government agencies have also built their own network of international cooperation in their areas of competence.

52. In order to improve its anti-money-laundering mechanism, amendments to legislation on the laundering of proceeds of crime have recently been forwarded to the Ukrainian Parliament. The amendments aim to provide for the corpus delicti of money-laundering, extending the predicate offences, facilitating information exchange and improving financial monitoring.

Notes

[1] See *Corruption and Integrity Improvement Initiatives in Developing Countries* (United Nations publication, Sales No. E.98.III.B.18).

[2] E/1996/99, annex.

[3] United Nations, *Treaty Series*, vol. 2072, No. 35930.

[4] Council of Europe, *European Treaty Series*, No. 173.

[5] *Official Journal of the European Communities*, C 195.

[6] Ibid., C 316.

[7] Ibid., C 184.

[8] Council of Europe, *European Treaty Series*, No. 174.